**STATE OF TENNESSEE**
# OFFICE OF THE ATTORNEY GENERAL

April 8, 2014

Opinion No. 14-45

Constitutionality of Amended Legislation Regarding Bribery, Extortion, and Riot

## QUESTION

If enacted, would House Bill 1687/Senate Bill 1662 of the 108th General Assembly (2014), as amended (hereinafter "Amended HB1687"),[1] be constitutional under the United States and Tennessee Constitutions?

## OPINION

Amended HB1687 can be defended against challenge as a content-based restriction on speech; it could, however, be preempted under federal labor laws.

## ANALYSIS

In Tenn. Att'y Gen. Op. 14-44 (Apr. 7, 2014), this Office considered the constitutionality of House Bill 1687/Senate Bill 1662 of the108th General Assembly (2014), as introduced (hereinafter "HB1687"), and opined that Section 2 of HB1687 was susceptible to challenge as a content-based restriction on speech under the First Amendment to the United States Constitution and that Section 2 could be preempted under Article VI of the United States Constitution. Op. 14-44, at 4, 7. Section 2 of Amended HB1687 differs from Section 2 of HB1687 in the following respect: it would amend Tenn. Code Ann. § 39-14-112(a) to provide that the offense of extortion includes using coercion upon another person with the intent to:

> [i]mpair *any entity*, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for *any entity*.

Amended HB1687, § 2 (new subdivision (a)(3)) (emphases added). Amended HB1687 thus uses the words "any entity" where HB1687 had used the words "a business, a union, or the owners or employees of a business" and the words "a public or private

[1] On April 1, 2014, the Criminal Justice Committee recommended HB1687 for passage as amended (drafting code number 15725) (copy attached). This opinion addresses that amended version of the bill.

organization, corporation, union, agency, person or other entity." *See* Op. 14-44, at 2.[2] The definitions for the terms "something of value" and "corporate campaign," however, remain the same under Amended HB1687.

Amended HB1687 can be defended against challenge as a content-based restriction on speech. It was HB1687's labor-specific, speaker-based proscription that led this Office to conclude that it could be seen as a content-based restriction and thus be subjected to strict scrutiny, which it was not likely to withstand. Op. 14-44, at 4-5. Although Amended HB1687 retains the original bill's preamble and its labor-specific list of items included in the definition of "something of value," the deletion of labor-specific language from new subdivision (a)(3) now allows this list to be interpreted as a *non-exclusive* list. *Cf.* Op. 14-44, at 4 & n.6. In other words, the pursuit by coercion of *other* valuable objectives of an entity could now amount to extortion under this bill. Because Amended HB1687 would not single out the pursuit of corporate-campaign objectives for special treatment under the extortion statute, it would not likely be seen as restricting speech on the basis of its content.

Section 2 of Amended HB1687, however, could still be preempted under federal labor laws, for all of the reasons discussed in Op. 14-44 and because it retains the labor-specific list of items included in the definition of "something of value." *See* Op. 14-44, at 7 & n.7.

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[2]Amended HB1687 makes similar changes in Sections 1 and 3. In Op. 14-44, this Office opined that Sections 1 and 3 of HB1687 did not raise constitutional concerns, *id.* at 3, 7, and nothing in Amended HB1687 alters that opinion.

Requested by:

The Honorable G.A. Hardaway
State Representative
37 Legislative Plaza
Nashville, Tennessee 37243

**Criminal Justice Committee 1**

**Amendment No. 3 to HB1687**

**Faison**
**Signature of Sponsor**

**AMEND Senate Bill No. 1662* House Bill No. 1687**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-16-102(b), is amended by designating the existing language as subdivision (b)(1) and by adding the following language as new subdivision (b)(2):

(2) It is no defense to prosecution under this section that the person who sought to influence a public official took action on behalf of a public or private organization or any other entity, for the purpose of organizing a campaign or for any other lawful purpose.

SECTION 2. Tennessee Code Annotated, Section 39-14-112(a), is amended by adding the following language as new subdivisions:

(3) Impair any entity, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity.

(A) For purposes of this section, "something of value" includes a neutrality agreement, card check agreement, recognition, or other objective of a corporate campaign.

(B) For purposes of this section, "corporate campaign" means any organized effort to unlawfully bring pressure on an entity, other than through collective bargaining, or any other activity protected by federal law, for the purpose of influencing a labor relation's goal or objective.

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SECTION 3. Tennessee Code Annotated, Section 39-17-301(3), is amended by deleting the language "which," and by substituting instead the language "whether or not participating in any otherwise lawful activity, which,".

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2014, the public welfare requiring it, and shall apply only to all offenses occurring on or after July 1, 2014.